IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT

JAIPUR BENCH, JAIPUR

ORDER

Prem Mohan Bhargava Versus The Settlement Commissioner & others

SB Civil Writ Petition No. 4377/1989
under Article 227 of the Constitution
of India

Date of Order : July 28, 2006

PRESENT

HON'BLE MR JUSTICE ASHOK PARIHAR

Mr KK Sharma – for petitioners
Mr NK Joshi and
Mr SB Mathur - for respondents
Mr JK Agrawal, Addl GA – for the State

BY THE COURT:

The matter appears to have a checkered history. The dispute is between the father and the son, both practicing lawyers, in regard to the land in dispute measuring about 39 bighas. The father, late Shri Gopal Bhargava, alleged to have purchased the land in the name of his son Shri Prem Mohan Bhargava. Shri Gopal Bhargava filed an application before the Assistant Settlement Officer, Dholpur for correcting the entries in the records in his name alleging the name of Shri Prem Mohan Bhargava entered in the

records as 'benami'. The Assistant Settlement Officer entered the name of Shri Gopal Bhargava in place of Shri Prem Mohan Bhargava vide order dated 6.2.1972.

It appears that after the entries been made Shri Gopal Bhargava died and, after his death, his son Prem Mohan Bhargava again filed applications before the Settlement Commission as also the Director, Land Records for correction in the entries, however, the same were rejected. Shri Prem Mohan Bhargava, thereafter, filed a suit for declaration under sections 88 and 183 of the Rajasthan Tenancy Act, 1955 (for short 'the Tenancy Act') before the Sub Divisional Officer, Dholpur on 20.1.1981. The suit was dismissed for non-prosecution on 26.12.1983. An application for restoration was also dismissed on 23.2.1993. Further appeal before the Revenue Appellate Authority was also dismissed vide order dated 9.3.1995. In the meanwhile, Shri Prem Mohan Bhargava, the present petitioner (since deceased), submitted a revision petition before the Board of Revenue, challenging the order of Assistant Settlement Officer dated 6.2.1972. The revision petition was dismissed by the Board of Revenue vide order dated 15.1.1988 on the ground of delay. The order of the Board of Revenue was further affirmed by the Division Bench of this Court vide order dated 13.1.1989. Even the review petition filed by the petitioner was dismissed by the Division Bench vide order dated 30.8.1989. Petitioner, again, filed the present writ petition on 29.9.1989, challenging the same order dated 6.2.1972 passed by the Assistant Settlement Officer, Dholpur.

It may also be mentioned here that the petitioner Shri Prem Mohan Bhargava also filed another suit for declaration and injunction under

section 188 of the Tenancy Act in regard to the same disputed land in the Court of the ACM, Dholpur on 22.7.1993, however, the suit was dismissed by the trial court vide order dated 1.11.1999, which was further affirmed by the Revenue Appellate Authority.

Mr KK Sharma, learned counsel appearing on behalf of the petitioner, has submitted that the land in question was acquired by the petitioner Shri Prem Mohan Bhargava himself in a public auction and his name was rightly entered as khatedar in the records of rights. It has also been submitted that earlier revision petition filed before the Board of Revenue had been dismissed on the ground of delay and since no decision has been given on merits either by the Board of Revenue or the Division Bench of this Court, the orders passed cannot be treated as res judicata.

On the other hand, Mr NK Joshi and Mr SB Mathur, learned counsel for the respondents, have submitted that without availing further remedy before the Hon'ble Supreme Court the present writ petition cannot be entertained, more so, even the declaratory suit filed by the petitioner had already been dismissed by the trial court way back in the year 1983 itself. Learned counsel for the respondents have also relied on the relinquish deed duly executed and registered by the petitioner in favour of his father in the year 1969.

After having considered submissions of the learned counsel for the parties I have carefully gone through the material on record as also the orders passed by the authorities, as referred above.

A bare reading of the material available on record would show that the petitioner Shri Prem Mohan Bhargava was unsuccessfully trying to re-open the matter again and again. There is no explanation, whatsoever, as to why the declaratory suit was not revived by filing any further appeal before the Board of Revenue. The relinquish deed duly executed and registered by the petitioner Shri Prem Mohan Bhargava has also not been disputed and explained by the petitioner. The order dated 6.2.1972, having attained finality after dismissal of the writ petition by this court, now, cannot be challenged again after more than 21 years. There is also no allegation in regard to any forgery of the relinquish deed or signatures of the petitioner on the application filed before the Assistant Settlement Officer for correction in the land records. Having considered entire facts and circumstances, in my opinion, no further interference is called for by this court in the present writ petition.

Accordingly, the writ petition is dismissed as having no merits.

(Ashok Parihar) J.

bnsharma